

FIRST AMENDED AND RESTATED
CITY ATTORNEY EMPLOYMENT AGREEMENT

This agreement is made by and between the CITY OF ALAMEDA (the "City"), a charter city and municipal corporation, and TERESA L. HIGHSMITH ("Highsmith")

RECITALS

Whereas, the City desires to employ the services of Teresa L. Highsmith as City Attorney of the City of Alameda; and

Whereas, Teresa L. Highsmith agrees to serve as the City Attorney of Alameda; and

Whereas, the City Council and Highsmith desire to agree in writing to the terms and conditions of Highsmith's employment as City Attorney.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Introduction and Term

1. EMPLOYMENT The City hereby agrees to employ Highsmith subject to the terms and conditions set forth below, and Highsmith accepts such employment. During the term of the Agreement, City agrees to pay Highsmith the compensation provided for in this Agreement.
2. TERM The initial term of this Agreement shall commence on June 1, 2006 and expire on June 2, 2012. As part of the Highsmith annual performance review, the City Council may decide to extend the contract term.

Duties and Professional Responsibilities

3. DUTIES Highsmith shall serve as the City Attorney of the City and shall be vested with the powers, duties and responsibilities set forth in the City Charter. In addition, Highsmith shall perform such other duties as may be assigned by the City Council, and which are consistent with the position of City Attorney, without additional compensation.
4. HOURS OF WORK Highsmith shall be an exempt employee (not subject to overtime requirements under the FLSA) and is expected to devote necessary time outside normal office hours to the business of the City. Highsmith's schedule of work each day and week shall vary in accordance with the work required to be performed. Highsmith shall

spend sufficient hours on site to perform Highsmith's duties; however, Highsmith shall be allowed flexibility in setting her own office hours with the understanding that Highsmith's regular workweek shall be 5 days/40 hours per week.

5. OUTSIDE ACTIVITIES Highsmith may not spend more than 10 hours per month in teaching, consulting, speaking, or other non-City business for which compensation is paid without the express prior consent of the City Council. In any event, such activities shall not be in conflict with, or bring discredit upon, the City. Further, Highsmith shall regularly update the Mayor and Council concerning such outside activities.
6. MEMBERSHIPS With notification to the Mayor and Council, the City shall budget and pay for the professional dues and subscriptions of Highsmith necessary for her continuation and full participation in such programs that enhance Highsmith's standing and the City's reputation, including national, regional, state and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement, including, without limitation, the State Bar of California.
7. PROFESSIONAL ACTIVITIES Highsmith agrees to devote her complete productive time, ability and attention to the City's business during the term of this agreement. Highsmith may, however, undertake limited outside activities, including serving as an officer or board member of City government organizations or other related activities, provided that such activities do not in any way interfere with or adversely effect her employment as City Attorney or the performance of her duties provided herein, or otherwise bring discredit upon the City. With notice to the Mayor and Council, the City shall budget for and pay the reasonable travel and subsistence expenses of Highsmith for professional official travel, meetings and occasions adequate to continue her professional development and to adequately pursue necessary official and other functions for the City and such other national, regional, state and local government groups or committees on which Highsmith may serve as a member. Highsmith shall advise the Mayor and Council of professional activities necessitating: out-of-state travel; or an unusual time commitment.

Base Compensation and Internal Adjustments

8. COMPENSATION PHILOSOPHY As a matter of City policy, the City Council commits to ensuring that the position of City Attorney is adequately compensated.

9. BASE SALARY Effective June 1, 2006, Highsmith shall receive an annual base salary of \$182,000 paid at the same intervals and in the same manner as other City employees. Thereafter, Highsmith's base salary shall be increased by 2% on May 27, 2007, and effective May 25, 2008 Highsmith's base salary shall be adjusted by the amount of the change as measured by the difference in the April 2007 through April 2008 Consumer Price Index (SF, OAK, SJ 1982 -1984 =100, W), with a minimum increase of two (2) percent and a maximum increase of four (4) percent. Subsequent increases over the term of this agreement shall be discussed at the annual performance review or at the request of either the City or Highsmith.
10. DEFERRED COMPENSATION (Money Purchase Plan) The City shall provide as additional compensation pursuant to Government Code Section 53214 to Highsmith a minimum of 1% base salary annually as additional deferred compensation pursuant to Section 401 of the Internal Revenue Code. Highsmith shall contribute 2% of total earnings to the plan in accordance with the City's plan document.

Annual Review

11. EVALUATIONS The City Council shall engage in a review of Highsmith's performance annually. Such reviews may be facilitated by a professional mutually acceptable to the City and Highsmith. The City Council and Highsmith shall establish such goals and performance objectives which they determine necessary and appropriate for the City Council's policy objectives. The City Council and Highsmith shall further establish a relative priority among those various goals and objectives. These goals and objectives shall be obtainable generally within the time limits as specified in the operating and capital budgets and appropriations provided.

Retirement, Health & Other Fringe Benefits

12. RETIREMENT The City contracts with the California Public Employees' Retirement System for retirement benefits. Highsmith will be covered by the City's "miscellaneous" (non-public safety) plan during her employment. The City will pay the mandatory employer contributions for this benefit; Highsmith will pay the employee contributions in accordance with Section 414 (h) (2) of the Internal Revenue Code.
13. VACATION Highsmith shall accrue, and may use, up to 25 days (equivalent of 200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Highsmith may carry over accrued but unused vacation time from one year to the next; provided, however, she may

not accrue vacation beyond a balance of 50 days/400 hours.¹ Upon separation from the City, Highsmith, or, in the case of her death while employed by the City, her heirs, shall be paid for all unused accrued vacation allowances. At her discretion, and if permitted under the City's existing contract with PERS, Highsmith may apply any unused vacation leave time to service credit for retirement purposes. Accumulated vacation balances shall be paid at Highsmith's salary rate at the effective date of separation.

14. OTHER LEAVES Except as provided herein, Highsmith shall receive the same paid holidays and leave time benefits as other City Department Heads (except for public safety).
15. OTHER FRINGE BENEFITS Highsmith shall be provided disability and dental benefits at the same levels that are provided to other City Department Heads (except for public safety). The City contribution for medical coverage shall not exceed 100% of the Kaiser premium for the coverage level (employee, employee +1, family) selected. If Highsmith elects not to enroll in one of the City sponsored medical plans, she will receive a maximum cash payment of \$230 per month in lieu of medical coverage. The City shall pay such other mandatory employer costs associated with Highsmith's employment including unemployment compensation, workers' compensation and Medicare contributions.
16. LIFE INSURANCE The City shall provide term life insurance in the amount of \$100,000 with the premium to be paid by the City. In the event Highsmith chooses to purchase a life insurance policy with a greater and more costly benefit, the City shall contribute up to \$500 annually toward the purchase of such a policy.
17. AUTO ALLOWANCE Highsmith shall receive \$250 each month as an automobile allowance. The allowance is in exchange for Highsmith making available for her own use a personal automobile and for her use of this personal automobile for City related business or functions during, before and after normal work hours. Highsmith shall maintain liability insurance at appropriate levels with respect to her personal automobile, and she shall list the City as an "additional" insured on her insurance policy. Highsmith is not precluded from occasionally using City vehicles for City business during, before and after the normal workday. A City vehicle will not be provided to Highsmith for her exclusive use. Should the Council decline to permit Highsmith the use of a City vehicle for longer trips (over 200 miles), Highsmith will also be entitled to mileage reimbursement at standard rates for such trips taken on City business.

¹ As used in this section only, "day" means 8 hour working day, unless otherwise specified.

Separation from Employment / Severance

18. RESIGNATION/RETIREMENT Highsmith agrees to give the City at least sixty (60) days written notice of the effective date of Highsmith's resignation or retirement, unless the Parties otherwise agree in writing.
19. TERMINATION The City Council may terminate this Agreement at its sole and absolute discretion, with or without cause. In the event the City Council terminates this Agreement without "cause," (as cause is defined in paragraph 21 of this Agreement), Highsmith will be paid full salary and benefits for a period of at least six (6) months from receipt of written notice of termination. The effective date of termination will be at the end of the six-month period. In exchange for the payment by City of full salary and benefits for a minimum of six (6) months after receipt of written notice of termination, Highsmith agrees to cooperate with an interim or appointed City Attorney to carry out the responsibilities of the office as set forth in this Agreement until the earlier of the time such services are no longer required, or the expiration of the six-month period. If the City Council requests the resignation of Highsmith, or does not either renew this Agreement nor execute a new employment Agreement, then Highsmith may, at her option, deem herself terminated without cause.
20. SEVERANCE In the event that Highsmith's services are terminated without "cause," in addition to the six months notice provided pursuant to paragraph 19 above, Highsmith shall be paid one month of full salary and benefits for each year served as City Attorney as severance, up to a maximum of three (3) months.
21. CAUSE In the event Highsmith is terminated for (1) continued abuse of non-prescription drugs or alcohol that materially affects the performance of her duties; (2) repeated and protracted unexcused absences from the City Attorney's office; (3) conviction of a felony or misdemeanor involving moral turpitude, City shall have no obligation to continue the employment of Highsmith or pay any severance, salary, or other benefits.
22. NOTICE The City Council will provide Highsmith with reasonable notice prior to conducting a meeting for the purpose of considering Highsmith's continued employment, and provide an opportunity for face-to-face dialog, before terminating Highsmith's employment. During any period of negotiation for terms of a new employment Agreement, the terms of this Agreement shall remain effective until either a new employment Agreement is approved by the City Council or the City Council otherwise terminates Highsmith's services.

23. NO ACTION PERIOD During a period of ninety (90) days immediately preceding or following the date of installation of any person newly elected to the Council at a regular or special municipal election or of any person newly appointed to the Council, the Council shall take no action, whether immediate or prospective, to remove, suspend, request the resignation of, or reduce the salary of Highsmith. If the City Council takes such action during this time period, Highsmith may at her option, be deemed to be terminated by the City Council and will receive six month's Base Compensation, and disability, health, and dental benefits continued for six months, as a severance benefit.

Arbitration of Disputes

24. ARBITRATION OF DISPUTES Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to Highsmith's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal and state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

The Arbitrator shall have no authority to alter, amend, modify or change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement. The decision of the Arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

The Arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the

AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Highsmith and the City and/or its employees, elected officials, directors, agents, officers or managers arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that relationship, including, but not limited to, any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies, anti-discrimination statutes or any employment-related statutes. THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

Miscellaneous

25. NOTICES Notice pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

TO CITY: Mayor and Council
City of Alameda
City Hall
Alameda, CA 94501

TO HIGHSMITH: Teresa L. Highsmith
City of Alameda
City Hall
Alameda, CA 94501

26. REIMBURSEMENT Highsmith will receive reimbursement for all sums necessarily and reasonably incurred and paid by her in the performance of her duties. Highsmith shall submit a claim form to the City in the form and manner required by the City municipal code or practices.

27. BONDS/LEGAL FEES The City shall bear the full cost of any fidelity or other bonds required of Highsmith under any applicable law or

ordinance. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs; provided that, recoverable attorneys' fees and costs shall not exceed the amount in controversy or \$50,000, whichever is lower.

28. INDEMNIFICATION Consistent with the provisions of the California Government Code, the City agrees to defend, hold harmless, and indemnify Highsmith against any claims, demands or legal actions, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and during the course of Highsmith's employment with the City, including, without limitation, claims arising out of personnel actions taken by her, subject to Highsmith cooperating in good faith with the City with respect to defense of such claims, demands, or legal actions.

29. SEVERABILITY In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

30. PARITY IN CONSTRUING AGREEMENT Each party has had the opportunity to participate in drafting the Agreement. Any terms, conditions or provisions of the Agreement shall not be construed against one party and in favor of another by virtue of who actually drafted or circulated the Agreement.

31. SOLE AGREEMENT The parties acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter, and that any modifications may only be effected by a writing signed by all affected parties. The parties agree that there are no representations, agreements, arrangements or understandings, either written or oral, between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

City of Alameda

Date: _____

Approved as to Form:

Inde. A. Trujillo

Teresa L. Highsmith

Date: 2-1-08